

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION

OF: DIEING ET AL.

SERIAL No. 09/913,980

FILED: AUGUST 21, 2001

FOR: HAIR COSMETIC FORMULATIONS



CONFIRMATION No.: 8232

GROUP ART UNIT: 1617

EXAMINER: SHAOJIA A. JIANG

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Commissioner of Patents and Trademarks, Alexandria, Va 22313-1450, on:

January 14, 2005

Date of Deposit

Sabine Berg

Person Making Deposit

Signature

January 14, 2005

Date of Signature

Honorable Commissioner

for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

PETITION UNDER 37 C.F.R. §1.182

Sir:

Applicants hereby respectfully petition to the Honorable Commissioner to withdraw the terminal disclaimer concerning US 6,403,076 which was filed by applicants along with their reply dated September 24, 2004, and which was executed by applicants' representative on September 24, 2004, in reply to the Office action mailed on July 27, 2004.

The respective terminal disclaimer was intended to address the provisional rejection of applicants' Claims Claims 21 to 25 under the judicially created doctrine of obviousness-type double patenting as being unpatentable in light of claims 1 to 6 of US 6,579,953 which was raised in the Office action mailed on July 27, 2004.

The rejections based on US 6,403,076 and the corresponding international application published as WO 99/04750 under the judicially created doctrine of obviousness double patenting and under 35 U.S.C.

§102(a) which were also raised by the Examiner in the Office action mailed on July 27, 2004, were addressed in applicants' reply dated September 24, 2004, by argument pointing out distinct differences between the subject matter claimed and disclosed in US 6,403,076 and the subject matter of the claims pending in the application.

Due to an inadvertent error on the part of applicants' representative, the terminal disclaimer erroneously referenced US 6,403,076 instead of US 6,579,953, and the obviousness-type double patenting rejection based on US 6,579,953 was therefore reiterated by the Examiner in a final action mailed on January 12, 2005.

Applicants have filed a terminal disclaimer referring to US 6,579,953 along with their reply to the final action, which reply is of even date with this petition.

In light of the circumstances summarized above it is respectfully requested that the terminal disclaimer referring to US 6,403,076 which was erroneously filed on September 24, 2004, be withdrawn. Favorable action is solicited.

FEE UNDER 37 C.F.R. §1.17(H):

It is respectfully requested that the \$130.00 fee set forth in 37 C.F.R. §1.17(h) be charged to Deposit Account No. 11.0345.

Please charge any shortage in fees due in connection with the filing of this paper, including Extension of Time fees, to Deposit Account No. 11.0345. Please credit any excess fees to such deposit account.

Respectfully submitted,

KEIL & WEINKAUF



Daniel S. Kim

Reg. No. 51,877

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HBK/BAS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

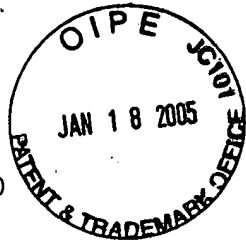
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TERMINAL DISCLAIMER  
CONCERNING US 6,579,953

Sir:

Your Petitioner, BASF Aktiengesellschaft, a corporation of Germany, having a place of business at 67056 Ludwigshafen, is the Assignee of the entire right, title and interest in and to pending application Serial No. 09/913,980, filed August 21, 2001, the assignment filed on August 28, 2001 having been recorded in the Patent and Trademark Office on Reel 012221 Frame 0470.

Your Petitioner, by undersigned attorney, hereby disclaims the terminal part of any patent granted application Serial No. 09/913,980 which would extend beyond the expiration date of U.S. patent No. 6,579,953, which patent is also owned by Petitioner.

Your petitioner hereby agrees that any patent based on application Serial No. 09/913,980 shall be enforceable only for and during such period that the legal title of the patent shall be the same as the legal title to U.S. patent No. 6,579,953, this agreement to run with any patent granted on application Serial No. 09/913,980, and to be binding upon the grantee, its successors or assigns.

Petitioner also states that the invention disclosed and claimed in application Serial No. 09/913,980 and the invention disclosed and claimed in U.S. patent No. 6,579,953 were commonly owned when the invention disclosed and claimed in the present application was made.

Petitioner further states that the evidentiary documents relating to the ownership of application Serial No. 09/913,980 and U.S. patent No. 6,579,953 have been reviewed and Petitioner certifies that to the best of its knowledge and belief, title is in Petitioner.

The undersigned has reviewed the documents in the chain of title of the U.S. application identified above and, to the best of undersigned's knowledge and belief, title is in the Assignee identified above.

This Terminal Disclaimer executed on behalf of the Assignee by undersigned attorney of record, this 14 day of January 2005.



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(Daniel S. Kim)  
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